

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Michael John Modena,

Petitioner,

v.

Federal Bureau of Prisons and Warden  
R. L. Morrison, Federal Prison Camp,

Respondents.

**MEMORANDUM OPINION  
AND ORDER**

Civil No. 06-1008 ADM/JSM

---

Michael John Modena, *pro se*.

---

This matter is before the undersigned United States District Judge pursuant to Michael John Modena's ("Petitioner") Objections [Docket No. 25] to Magistrate Judge Janie S. Mayeron's Report and Recommendation ("R&R") [Docket No. 18] and Order [Docket No. 17] of May 18, 2006. For the reasons set forth below, the Objections are overruled and the R&R is adopted.

On April 6, 2006, Judge Mayeron issued an Order [Docket No. 10] requiring the Federal Bureau of Prisons and Warden R. L. Morrison, Federal Prison Camp ("Respondents") to respond to Petitioner's Amended Petition for Writ of Habeas Corpus [Docket No. 9] and Motion to Order Injunction Against B.O.P. DNA Collection [Docket No. 8] within thirty days of the Order. Respondents did not respond within the thirty-day time period. On May 9, 2006, Petitioner filed a Motion for Release on Habeas Corpus Writ [Docket No. 12], and on May 16, 2006, he filed a Motion for Summary Default Judgment [Docket No. 14]. On May 11, 2006, Respondents filed a Motion for Enlargement of Time to Respond [Docket No. 13]. In their Motion, Respondents represented that the government had inadvertently overlooked the electronic notification of

Judge Mayeron's April 6, 2006 Order. Consequently, Respondents requested an extension to May 26, 2006, to respond to the Petition. On May 18, 2006, Judge Mayeron granted Respondents' requested extension [Docket No. 17]. In her R&R, Judge Mayeron recommends that Petitioner's Motion for Release on Habeas Corpus Writ and Motion for Summary Default Judgment be denied as moot.

In reviewing an R&R, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); see also D. Minn. LR 72.2(b). A district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

In his Objections, Petitioner argues that Respondents should not be given additional time to respond and his Motions should be granted. This Court recognizes Petitioner's frustration with Respondents' delay, and does not look favorably on the Respondents' late response. However, the "relatively short delay" caused by the government's oversight of an electronic notification does not require the extreme measure of default judgment. Ruiz v. Cady, 660 F.2d 337, 339 (7th Cir. 1981) (holding a district court's grant of default judgment for a habeas petition was abuse of discretion); see Bermudez v. Reid 733 F.2d 18, 22 (2d Cir. 1984) (holding for public policy reasons that courts should decide habeas cases on the merits rather than through default judgment). In addition, Petitioner's Objections are moot because Respondents have now filed their Response [Docket No. 19].

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The R&R [Docket No. 18] is **ADOPTED**;
2. Petitioner's Objections [Docket No. 25] are **OVERRULED**;
3. Petitioner's Motion for Release on Habeas Corpus Writ [Docket No.12] is **DENIED AS MOOT**; and
4. Petitioner's Motion for Summary Default Judgment [Docket No. 14] is **DENIED AS MOOT**.

BY THE COURT:

\_\_\_\_\_  
s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: June 29, 2006.